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ABSTRACT

This primer for state legislators discusses reasons for the current increase in home schooling and describes legislative actions regulating home schooling. In regards to guidelines for making workable laws regarding home schooling, attention is given to: (1) requiring communication between parent and school; (2) establishing minimum standards for home schools; (3) establishing accountability procedures and mechanisms for evaluating a student's progress; and (4) imposing sanctions on home schools that fail to comply with the home schooling laws. Some additional provisions are specified. Instances of state legislation that illustrate the guidelines are described. (RH)

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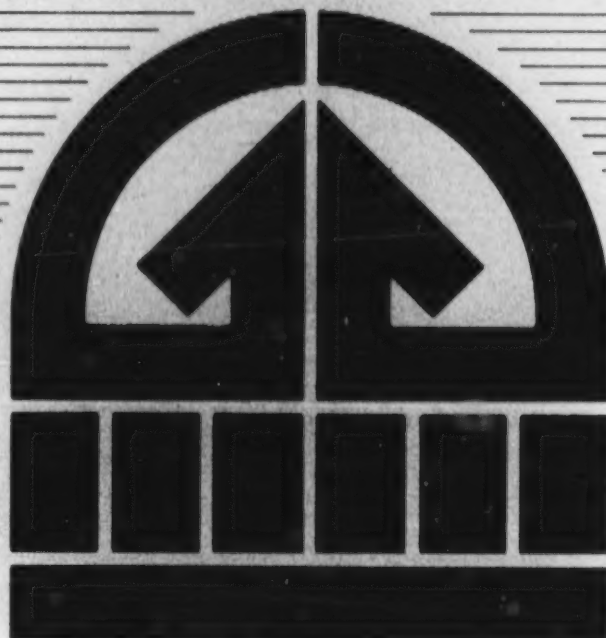
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HOME SCHOOLING: A PRIMER FOR STATE LEGISLATORS

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Vol. 14 No. 1

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HOME SCHOOLING: A PRIMER FOR STATE LEGISLATORS

INTRODUCTION

Home schooling is an issue that epitomizes the longstanding debate between public and religious interests in education. This tension between church and state has existed since the public education system first emerged and has intensified during the past 30 years over a variety of issues such as prayer in schools and how religion is portrayed in textbooks. Some see these issues as the battlegrounds for religious freedom which, due to their complex natures, have typically been resolved in the courts and state legislatures.

The court rulings on home schooling have sent mixed messages to parents, educators and lawmakers. On one hand, the courts have sided with the states and favored regulation of home schools. Courts in Alabama, North Carolina, North Dakota and West Virginia recently ruled in favor of state requirements that restrict home schooling. And in Arkansas and Kansas state supreme courts ruled that compulsory attendance laws required "school" attendance and that home schools were unable to meet that requirement.

On the other hand, compulsory attendance laws in several other states--Georgia, Iowa, Minnesota, Missouri and Wisconsin--were rejected by the courts as being too vague. Most frequently the key issue was the inability of those states to define "school" or "equivalent instruction." Confronted with similar problems, courts in Illinois, Indiana and North Carolina ruled in favor of the home schoolers by saying that a "home" can be a "school" and "equivalent instruction" does include "home instruction."

The most recent wave of pending litigation is focusing on the extent to which a state can regulate home schooling. The laws being questioned include: 1) requirements that parents be certified to teach; 2) regulations pertaining to what curriculum is taught; and 3) provisions regarding the monitoring of a child's academic progress.

The flourish of activity in the state courts and the tremendous growth in home schools has amplified the need for home schooling laws that are uniform throughout the state; address specific issues by using clear, easy-to-understand language; and are easily administered.

WHY HOME SCHOOLS?

Estimates of the number of children in home schools range from 250,000 (U.S. Department of Education) to one million (Home School Legal Defense Association) children nationwide. There are many reasons why parents want to teach their children at home rather than enrolling them in public schools. Studies have shown that these include: 1) religious reasons; 2) alleged concerns about public schools, such as widespread drug use or lack of discipline; 3) unusual family circumstances, such as a heavy travel schedule of parents; and 4) special needs or interests of the child or family that may necessitate a more individualized approach.

Generally speaking, the home schooling movement is gaining momentum. This is due in part to a resurgence of religious activism which has been bolstered by successful challenges in the courts. The demographic patterns for home schoolers reveal that: many children taught at home eventually return to school; most home schooling parents are better educated than the general population; approximately 85 percent of parents engage in home schooling for religious reasons; approximately two-thirds of all students in home schools reside in 11 states (California, Oregon, Washington, Michigan, Texas, Oklahoma, Ohio, Florida, Georgia, Illinois, Indiana); and about one-third of the home schools use a commercially prepared curriculum.

WHAT HAVE LEGISLATURES DONE?

Traditionally home schooling has been regulated by state legislatures and state boards of education via laws and policies that broadly address public education. Since the home schooling issue is relatively new, most existing education laws just touch on the home schooling question by requiring compulsory school attendance; certification of teachers; standardized testing; and the regulation of private and church schools. This approach has proven unacceptable to home schooling parents because it is cumbersome and gives too much discretion to local school districts. It also poses problems for legislatures because it has frequently been found unconstitutional by the courts.

As the numbers of students involved in home schooling and the amount of litigation surrounding the home schooling issue have grown, more and more states have created specific laws and regulations to address the needs of home schools. Today 30 states have laws providing for home instruction by a parent or tutor. During 1988 six states (Colorado, Hawaii, Maine, New York, North Carolina, South Carolina) either passed laws or set regulations for home schools.

The laws vary from state to state, with some more restrictive or controlling than others. Iowa, Michigan and North Dakota have the most restrictive laws because of the extent to which they regulate home schooling and require instructors to be certified in order to teach. The certification requirements are currently being challenged in both North Dakota and Michigan.

Other states such as Hawaii, Missouri, Montana and Wisconsin have home schooling laws that are straightforward and less restrictive. Ironically, there have been no court challenges in those states.

The home school issue has fostered two distinct schools of thought. On one side are the home schoolers, who tend nationwide to desire laws that are non-restrictive and allow them to educate their children in the manner they deem appropriate. On the other side, the education community wants laws that feature rigorous standards and controls. It poses an interesting challenge for legislatures. Fortunately, it's a challenge that can be resolved through compromise, the trademark of the legislative process.

MAKING WORKABLE LAWS

So what provisions should a home schooling law contain? Four elements are widely acknowledged as necessary ingredients of a workable law. They are provisions that:

- o Require communication between the parent and the school district;
- o Establish minimum standards for home schools;
- o Establish accountability procedures and mechanisms for evaluating a student's progress; and
- o Impose sanctions on home schools that fail to comply with the home schooling laws.

Communication Between Parent and School. Most people agree that there should be communication between the public school and the home school at the onset of the home school process. There is disagreement, however, over the nature of that communication. Generally speaking, the home schoolers would like to "notify" the school district of their intent to educate their children at home. They would prefer that to be their only obligation. On the other hand, the public schools would like to be in a position of "approving" each home schooling request. Some examples of state laws pertaining to notice of intent include:

- o In Arkansas (Ark. Stat. Ann. §80-1503.6[1]), parents must notify their public school superintendent in writing of intent to home school every year. Information that must be included for statistical purposes: student names, birthdates, grade levels, location of home school and the qualifications of the parent to teach.

- o In Colorado (S.56, 1988 Colo. Laws), parents must give notice 14 days before starting home schooling and annually thereafter. Information that must be included: names, ages, residence, and hours of attendance.
- o In Georgia (Ga. Code Ann. S 20-2-690[c][2]), parents must submit notice of intent to superintendent 30 days after the establishment of the home school program, and by September 1 annually thereafter. Information that must be included: names, ages, location and the time the parents designate as their school year.
- o In Montana (Mont. Code Ann. S 20-5-102[2][f] [1985]), the county superintendent must be notified of intent to home school. (Neither the superintendent nor the school board has the authority to approve home schools).

Currently 24 states and the District of Columbia require home schools to be approved by the local school board or district. Some examples of state laws pertaining to approval are:

- o In Alaska (S14.30.010[b][1]), the child must be "equally well-served by an educational experience approved by the school board" after the parent requests that a child be excused from school attendance.
- o In Maine (Me. Rev. Stat. Ann. title 20-A S5001-A [3][a][1] [Supp. 1987]), the home school may qualify as "equivalent instruction in an approved private school or in any other manner arranged for by the school board" if "the equivalent instruction is approved by the commissioner." The family must initiate the request for home study at least 30 days before the start of home school, and must be approved by the local school board and by the commissioner of education.

Minimum Standards. Of the states with home schooling laws, most require home schools to meet some standards. These vary, but generally focus on three things: 1) the qualifications and competency of the home school instructor; 2) the curriculum of instruction; and 3) the regular evaluation of educational progress.

The qualifications to be a home school instructor range from stringent standards in states like Iowa, Michigan and North Dakota where homeschoolers must meet the state's teacher certification standards, to states like West Virginia where the instructors must have four years of education beyond the child's; to Arizona, where the instructor must pass the state's teacher examination; to New York, where no qualification standards are required of instructors.

The basic argument for those wanting minimal standards for instructors is that the emphasis should be on results, not regulation. They believe that by requiring parents to expend energy on working through red tape, time is taken away from the kids.

A second standard that is fairly typical is a requirement that the home school have a curriculum that is "equivalent" to the public schools. Any curriculum requirements which must be met in order to set up a home school should not limit religious instruction because that would be an infringement of the First Amendment. However, curriculum reviews may be appropriate if they can be supported as a legitimate educational activity.

Obviously, curricular requirements should be minimal, but should require parents to provide the school district with a list of books, materials and a syllabus of study for each child. Two examples are:

- o Connecticut (Conn. Gen. Stat. Ann. S 10-184 [1986]), where the parent must show that the child is receiving "equivalent" instruction in studies taught in public schools. Equivalency is determined by the local board, and its decision must be approved by the State Board of Education; and

- o **District of Columbia** (D.C. Code Ann. S31-401[1981], where the home school program must be "deemed equivalent" by the Board of Education (24 D.C. Reg. 1021). Categories to be considered when judging equivalency are: hours of instruction, subjects, teacher's qualifications, facilities and student records.

In addition, since many parents use curriculums or correspondence courses they've purchased, state legislatures might want to consider developing an approved list of correspondence courses and instructional materials so the approval process could be simplified. This list could also serve as a resource for parents wanting to educate their children at home.

Lastly, in order for a home schooling program to be approved, many states require that some evaluation procedures be established. Typically this involves using a nationally-normed, standardized achievement test. Twenty states now have this type of provision. A recent court decision in Arkansas bolstered this trend when it upheld that state's right to test home schooled children.

The general goal of the evaluation requirement is to show that the child is making academic progress. A sampling of states with test requirements shows that:

- o In **Arizona** (Ariz. Rev. Stat. Ann. S 15-802[B][1] [Supp.1987]), a child must take a standardized test annually as prescribed in S 15-741;
- o In **Arkansas** (Ark. Stat. Ann. S 80-1503.6-.8.), children over 7 must take a standardized test each year. The test is chosen by parents from a list provided by the state Board of Education and administered by a person designated by the Board;
- o In **Colorado** (Home-Based Educational Programs Act, S. 56, 1988 Colo. Laws), children must be tested with the national tests used in local district grades 3, 5, 7, 9 and 11. The test results are submitted to the local school district or parochial school. If the child scores above the 13th percentile, the child will continue to be exempt from compulsory public school attendance requirements; and
- o In **Florida** (Fla. Stat. Ann. S 228-041[34] [West Supp. 1988]), student tests are administered by a certified teacher, unless the student is "evaluated by any other valid measurement tool as mutually agreed upon" by the superintendent and parent, evaluated by a certified teacher, or takes a state student assessment test. The results must be filed annually with the local school district.

Accountability Procedures. Determining a method for holding a home school accountable for a child's education is difficult for legislatures to do, since state lawmakers are in the awkward position of both safeguarding the right of parents to teach their children at home and supporting the state's obligation to monitor the child's educational process. The accountability procedures used by most states focus only on whether or not a child is learning at home and is acquiring minimal skills. The safety and neglect issues are left to other agencies and previously established safety-net procedures, where the state intervenes when there is reasonable suspicion or concern. Such is the case in Hawaii, Missouri, Montana, and Wisconsin.

Accountability provisions are fairly typical throughout the states, but are manifested in different ways in different states; some are via special home schooling laws, while others are through the education or social services laws. The most popular tool used is a nationally recognized, norm-referenced test, but other mechanisms have begun to surface in recent years. New York and Virginia, for example, require that parents compile a portfolio of student work to be reviewed at regular intervals.

Many people ask if the home school should be monitored by the local school. In several states the home schools are required to either keep records or file reports with the local school. Here are a few examples:

- o In Arizona (Ariz. Rev. Stat. Ann. S 15-828 [Supp. 1987]), within 30 days after home schooling begins, the parent must file "a certified copy of the child's birth certificate," or "other reliable proof of the child's identity and age" with the county school superintendent. Failure to do this results in an investigation by the local law-enforcement agency.
- o In Colorado (Colo. Rev. Stat. S 22-33-104.5), parents must keep records of attendance, tests and evaluations which the local school district may see only with 14 days' notice and if the superintendent "has probable cause to believe" the home school program is not in compliance with statute.
- o In Georgia (GA. Code Ann. S 20-2-690[c][6]), parents must keep attendance records and submit them to the superintendent each month. These will "not be used for any purpose except providing necessary attendance information."
- o In Montana (Mont. Code Ann. S 20-5-102[2][f] [1985]), the home school must maintain attendance and immunization records which must be available for inspection by the county superintendent.

Sanctions. States also have provisions in their laws that respond to students who fail to learn and home schools that do not meet the standards or are ineffective in educating children. Some laws place home schools on probation; others require that a child be re-evaluated and subsequently enrolled in a public or private school. Here are a few examples from the states:

- o In Arkansas (Ark. Stat. Ann. S80-1503.6-.8.), if a child's test score results are unsatisfactory, i.e., eight months below grade level, the child may be retested or enrolled in a private or public school.
- o In Colorado (Colo. Rev. Stat. S 22-33-104.5 [effective July 1, 1988]), if the child scores below the 13th percentile on achievement tests, the public school must be notified. That child can be retested with an "alternative version of the same test or a different nationally standardized achievement test selected by the parent from a list of approved tests."
- o In Florida (Fla. Stat. Ann. S 228.041[34] [West. Supp. 1988]), if the results of testing are not satisfactory, the home school will be placed on a one-year probation.
- o New York (N.Y. Educ. Law S 3204[1] [Consol.1985] has a two-year probationary period for home schools that haven't met the standards. During that time a child must "show progress." In addition, parents must submit a separate plan, like an individualized home instruction plan (IHEP), which the school district must sign. The plan must contain objective measures and the home school must meet at least 75 percent of those goals or else be closed.

Miscellaneous Provisions. In addition to the four types of provisions mentioned, there are other policy options that are receiving consideration. Three of them are:

- o Allowing students to attend some classes--such as drivers' education or computer training--at a public school. Washington state has a provision allowing partial day attendance;
- o Using itinerant teachers who work for the public school system and are certified by the state as resources for home school instructors and as a way of complying with the teacher certification laws. This approach is being used by the Des Moines Public Schools; and
- o Providing home schools with greater access to public school libraries and other educational resources.